UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

175 W. Jackson Boulevard, Suite 1450

Chicago, IL 60604

Chicago
Regional Office

August 4, 2025

<u>**Via ECF**</u>

Honorable Lorna G. Schofield
United States District Judge
United States District Court
for the Southern District of New York
40 Foley Square
New York, New York 10007

  Re: *SEC v. Eisenberg*,
    <u>No. 1:23-cv-503-LGS (S.D.N.Y.)</u>

Dear Judge Schofield:

  On March 13, 2023, upon motion of the United States Attorney for the Southern District of New York to intervene and stay, the Court stayed this securities fraud and manipulation case "until the conclusion of the criminal case, *United States v. Eisenberg*, 23-CR-10." (Dkt. No. 16.) In April 2024, a jury convicted Defendant Avraham Eisenberg of commodities fraud, commodities manipulation, and wire fraud. The Defendant filed post-trial motions pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure. On May 23, 2025, Judge Subramanian granted the Rule 29 motion and vacated the commodities fraud and commodities manipulation convictions for want of venue and indicated that he would enter a judgment of acquittal on the wire fraud count. (Crim. Dkt. No. 220.) On May 28, 2025, Judge Subramanian entered the judgment of acquittal on the wire fraud count. (Crim. Dkt. No. 223.) On July 22, 2025, the government filed a notice of appeal as to both the May 23 and May 28, 2025 decisions of the Court. (Crim. Dkt. No. 228.)

  Plaintiff United States Securities and Exchange Commission and Defendant Eisenberg (collectively, the "Parties") hereby jointly and respectfully request that the Court continue the stay of this civil case until the resolution of the criminal case following the appeal. The United States Attorney's Office does not object to this request, and its counsel is copied on this letter.

  Continuing to stay a case through appeal and remand is not without precedent. *See, e.g., SEC v. Borland*, No. 18-cv-4352 (PKC), Dkt. Nos. 22, 41 (S.D.N.Y.) (ordering case stayed "pending resolution of the criminal proceeding"; vacating stay after criminal appeal). Here, the government has appealed Judge Subramanian's determination that

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there was insufficient evidence of venue in the Southern District to support the commodities fraud and manipulation counts, among other issues. (Crim. Dkt. Nos. 220, 228.) The outcome of the criminal appeal therefore may inform whether this civil case, which involves similar facts, should go forward in the Southern District. Furthermore, if the Court of Appeals reinstates the commodities fraud and manipulation counts, the Parties may be able to resolve this matter without further litigation, conserving the resources of the Court and the Parties. *See, e.g., SEC v. Treadway*, No. 04 Civ. 3464 (VM) (JCF), 2005 WL 713826, at *2-3 (S.D.N.Y. Mar. 30, 2005) (listing factors). Accordingly, the Parties respectfully request that the Court continue the stay of this matter until the resolution of the criminal case following the appeal.

Respectfully Submitted,

/s/ Alyssa A. Qualls

Alyssa A. Qualls
Attorney for Plaintiff
United States Securities and Exchange Commission
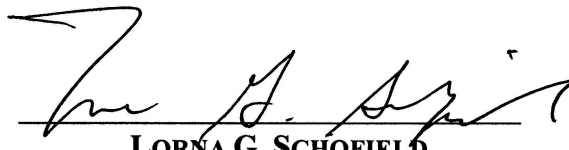
cc: Sanford N. Talkin
          Counsel for Defendant Avraham Eisenberg
       Thomas Burnett
          Assistant United States Attorney

For substantially the reasons stated in the parties joint request to continue the stay is **GRANTED**. Both 23 Civ. 173 and 23 Civ. 503 are **STAYED**, until the conclusion of the criminal case following the appeal in *United States v. Eisenberg*, 23 Crim. 10.

By two weeks after the conclusion of the criminal case, the parties in both matters shall file a joint letters, proposed civil case management plans and scheduling orders, as required by the Order scheduling the initial pretrial conference.

The Clerk of Court is respectfully requested to close the motion at Dkt. No. 22, and to enter the endorsement in both 23 Civ. 173 and 23 Civ. 503.

Dated: August 1, 2025
       New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE